IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7349 OF 2006

Shri Sumant Sharadchandra Ranade] .. Petitioner

Versus

1. Mr. Jagannath B. Shetty & Anr.] .. Respondents

Mr. R.S. Apte i/b A.A. Garge for the petitioner.

CORAM: S.B. MHASE, J.

DATED: 15TH JUNE, 2007

P.C. :

. Heard Mr. R.S. Apte, the learned counsel for the petitioner. The order passed by the District Judge, Pune, in Civil Appeal No. 727 of 2005 on 28th April, 2006, is under challenge. The said Appeal arises from a Regular Civil Suit No.398 of 2003 decided on 3rd September, 2005 by the Small Causes Court, Pune. The appellant is the landlord. Initially, the Suit was decreed. The said decree was challenged by the respondent-tenant by filing the above referred Appeal. The Appeal is allowed and the cross-objections are disallowed and, therefore, the original landlord has approached this Court. The Suit was file on the ground that the defendants have carried out an unauthorized

construction by committing an encroachment on the premises of the plaintiff. It is also filed on the ground that the defendants have sublet the said premises to the original defendant No.2 and the third ground on which the Suit has been filed is the nuisance caused by the defendants.

2. This Court perused the judgment. Initially, the Suit has been filed in respect of the property admeasuring 1030 sq.ft. However, according to the defendant he is in possession of 7687 sq. ft. and claims that the description of the property is not correct. The said issue of description of the property has been decided by the Appellate Court on the basis of the admission given by the plaintiff-petitioner in the cross-examination. The plaintiff has admitted in the cross-examination that the open land admeasuring 7687 sq.ft. from the suit property is in possession of the defendant No.1 as a tenant since last 30 years. If this admission is taken into consideration, then the suit filed in respect of the area of 1030 sq. ft. is misconceived and, therefore, the Appellate Court has recorded finding to that effect. That finding is justified.

3. So far as the issue in respect of the

encroachment and construction is considered, it is now established that the defendant No.1 is in possession of 7687 sq. ft. as a tenant for the last 30 years and, therefore, there is no question of encroachment. These premises were previously held by one Lele Trust and one Shri Ranade was managing the said Trust as a Member. It has been brought on record that the Manager of the said Trust Shri Ranade has specifically given permission for the improvement of the premises and, therefore, the work was carried out with the permission of the earlier landlord. It is further to be noted that some construction has been carried out with the permission of the plaintiff-petitioner and for that purpose, the petitioner has also increased the rent. If these aspects are taken into consideration, then that proves the finding of the Appellate Court that there is no encroachment and/or no construction without permission of landlord is justified.

4. So far as the point of subletting is concerned, after analysing the evidence on record, the Appellate Court has concluded that no evidence has been brought on record to demonstrate that there is subletting. On the contrary, defendant No.1 has brought on record that defendant No.2 is a relative of defendant No.1 and that he is managing the business of the

defendant No.1 in the capacity of Manager. In order to prove this aspect, he has produced on record his business licence wherein the name of the defendant No.2 is shown as the Manager and ultimately, the plaintiff-petitioner has failed to bring on record any material to show the relationship of subletting by the defendant No.1 and, therefore, the said issue has been rightly answered.

5. On the point of nuisance, it appears that in the year 1990, there was a dispute between the plaintiff and the defendants on account of installation of a iron gate and for that purpose, the case was filed and in 2002, the defendant No.2 was convicted. However, it is to be noted that the dispute between the defendants was in respect of the civil rights in respect of the tenanted lands and it is further to be noted that in the year 1990 when the incident had taken place, the petitioner was not the owner of the said premises nor he was a landlord and, therefore, that incidence cannot be taken into consideration to conclude that the defendant No.2 is causing nuisance.

6. Ultimately, this Court finds that there is no substance in the Petition and the Petition is hereby rejected.

Sd/-
[S.B. MHASE, J.]